HON'BLE SRI JUSTICE R.SUBHASH REDDY

WRIT PETITION NO :16337 of 2002

Dated 1st August, 2007

Between

Grandhi Nageswara Rao, and, ors

…Petitioners

and

The Chairman and Managing Director, APEPDCL, Dabagardens, Visakhapatnam, and, ors

…Respondents.

THE HON'BLE MR JUSTICE R.SUBHASH REDDY

WRIT PETITION NO : 16337 of 2002

ORDER:

This Writ Petition is filed challenging the validity of the proceedings in Lr.No. DE/O/RCP/Comml/D.No.1080/2001, dated 30-5-2001 issued by the Divisional Engineer, Operation, Ramachandrapuram, East Godavari District.

The first petitioner, in the capacity of the Managing Partner of M/s.Golingeswara Rice Mill, situated at Biccavole village and Mandal in East Godavari District, which was established in the year 1974, obtained Service Connection bearing SC.No. 122 for supply of electricity to the said Unit with a contracted load of 74 HP, which was categorized as Low Tension Category-III. Subsequently, another Service Connection bearing SC.No.391 was obtained with contracted load of 30 HP for the G.Nageswara Raw and Boiled Rice Unit.

As per the Terms and Conditions of Supply, framed by the

erstwhile A.P. Electricity Board in exercise of powers under Section 49 of the Electricity (Supply) Act, 1948, at the first instance, a letter dated 24-11-2000 was addressed by the Assistant Divisional Engineer, Operation, Eastern Power Distribution Company of AP Limited, Anaparthy, to the petitioners, directing them to get the Category changed from Low Tension to High Tension. Referring to the said letter dated 24-11-2000, the impugned order is passed by the Divisional Engineer, Operation, Ramachandrapuram, informing the petitioners that a decision was taken in exercise of powers under Clause 27 of the Terms and Conditions of Supply to club the Units owned by the petitioners, namely, M/s. Golingeswara Rice Mill, and, M/s. G.Nageswara Raw and Boiled Rice Unit, as single unit, and requested the petitioners to switch over to High Tension supply within three months from the date of this order. Though referring to the letter dated 24-11-2000 issued by the Assistant Divisional Engineer the petitioners had filed objections on 3-12-2001 against the said proposal of the respondents for treating the two units as single unit and switching over to High Tension Supply, but however, in the meanwhile, impugned order is passed on 30-5-2001 stating that multiple industrial service connections bearing Nos. 122 and 391 belonging to the same management are existing in the same premises, and, the said Units are producing related components of the same product, and, as such, it was decided to treat the said two units, namely, M/s. Golingeswara Rice Mill, and, M/s. G.Nageswara Raw and Boiled Rice Unit, as one establishment and directed the petitioners to switch over to High Tension supply within a period of three months.

It is the case of the petitioners that the said two establishments are different and distinct, and, are being operated by different staff. It is further submitted that the constitution of the partnership firms is also different and said two units are separately located, by purchasing at

different times through different registered sale deeds. It is further submitted that the impugned order is passed without giving opportunity and without examining as to whether the two units are different setups, owned by different persons, and run by different staff, or, not.

Though Writ Petition is of the year 2002, no counter affidavit is filed. But, however, it is submitted by Sri O.Manohar Reddy learned Standing Counsel appearing for the respondents that the said units are being operated inter-connecting each other by transferring paddy from boiling unit to the rice mill, and, both are being managed by same management. It is submitted that in view of the same, the authorities have exercised discretion as per the proviso to Clause 27 (3) of the Terms and Conditions of Supply,

Earlier, a learned Single Judge of this Court had considered the very same issue in the case of *Hemanth Fan Components Vs. Central Power Distribution Co.of AP Ltd*, { 2001 (2) LS 185} and, held that the condition precedent for exercising the discretion by the Department for treating different units as single Unit for the purpose of reckoning them as HT category is that separate establishments should not only be situate within a single premises but should also be owned or leased by same person. A perusal of the impugned order indicates that the decision to treat the said two units as one establishment was taken on the ground that they are in the same premises. However, there is no indication of affording any opportunity to the petitioners before taking such a decision. Even in the letter dated 24-11-2000 issued by the Assistant Divisional Engineer, the petitioners were asked to switch over to the High Tension Category without issuance of any show cause notice for clubbing the said units. It is the case of the petitioners that the said two units are different set ups, and are being managed by different partnership firms and operated by separate staff. It is also the case of the petitioners that both the units were purchased at different times through different registered

sale deeds, and as such, they cannot be treated as single establishment. Though it is submitted by the learned Standing Counsel appearing for the respondents that both units are operated by inter connecting each other for transfer of paddy from one unit to the other, but however, the same is not recorded in the impugned order. No counter affidavit is also filed to that effect. Unless the said issue as to whether the said two units form a single establishment within the meaning of Clause 27 of the Terms and Condition of Supply is considered and a decision is taken, discretion under proviso to Clause 27 (3) cannot be exercised unilaterally. As separate connections are provided at different times with different contracted loads, before clubbing the said two establishments for the purpose of treating single establishment and switching over to HT category, the respondents, at least, ought to have issued prior notice indicating reasons for such clubbing and invited objections. As much as no valid reasons are recorded in the impugned order, and in view of the judgment of this Court referred above, I deem it a fit case to direct the respondents to reexamine the issue.

For the foregoing reasons, I dispose of the Writ petition, permitting the petitioner to file fresh objections against the proposal of the respondents for treating the said two units as single unit, within a period of four weeks from the date of receipt of this Order. On such filing of objections by the petitioner, the respondents shall re-consider the same and pass appropriate orders.

Though Writ Petition was filed in the year 2002, this Court had not granted any interim order at the stage of admission. In that view of the matter, if the said units are clubbed, treating as one establishment as on today, the same shall be continued on the same terms and conditions, till the appropriate orders are passed by the competent authority.

Subject to the above direction, the Writ Petition is disposed of.

No order as to costs.

JUSTICE R. SUBHASH REDDY

DATE: 01-08-2007.
Msnr.